WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2550

IN THE MATTER OF:	Served May 1, 1984
Application of VIP COACH SERVICES, INC., for a Certificate of Public Convenience and Necessity to Conduct General Charter Operations	Case No. AP-83-48
WHITE HOUSE SIGHTSEEING CORPORATION v. VIP COACH SERVICES, INC.	Case No. FC-83-02
Application of VIP COACH SERVICES, INC., to Acquire Stock Control of WHITE HOUSE SIGHTSEEING CORPORATION	Case No. AP-84-06

In Case No. AP-83-48, VIP Coach Services, Inc., made application for a certificate of public convenience and necessity to transport passengers for hire, in charter operations, between points in the Metropolitan District. Beltway Limousine Service, Inc., Airport Limo, Inc., Eyre's Bus Service, Inc., Gold Line, Inc., and White House Sightseeing Corporation are active protestants in this case and the staff, through the Commission's general counsel, is also a party.

Case No. FC-83-02 is a formal complaint brought by White House Sightseeing Corporation against VIP Coach Services, Inc., and several other persons (individual and corporate) controlling or under common control with VIP Coach Services, Inc. Generally, the complaint alleges unauthorized operations, tariff violations and leasing violations by the various respondents. The complainant and the corporate respondents are represented by counsel, but no appearances were made by, or on behalf of, the individual respondents. 1/ The staff, again through the Commission's general counsel, is also a party.

These two cases were consolidated and public hearings thereon commenced on December 19, 1983. Three full days of hearings were held.

1/ The individual respondents are Messrs. Peter Picknelly and Louis Magnano.

By motion filed February 7, 1984, VIP Coach Services, Inc., requests that Case No. AP-83-48 be dismissed. It is clear that the Commission cannot require a carrier to seek a certificate where ". . . it is not required by law to engage in the proposed operations, and might choose not to engage in them . . . ." 2/ Accordingly, we find that this motion should be granted.

White House has requested that Case No. FC-83-02 also be dismissed. VIP does not object to dismissal, but Gold Line, Eyre's and Airport Limo oppose the motion.

Counsel for these carriers assert that the (partial) hearing record clearly shows violations by VIP, and that dismissal would "white wash the admitted, notorious and repeated unlawful conduct on the part of V.I.P. Coach Services, Inc." In reply, White House contends that it cannot be forced to incur further costs where it is no longer interested in prosecuting the complaint. The parties also disagree about whether the Commission is obligated to grant dismissal or whether such action is discretionary.

Addressing the latter question first, we are of the view that dismissal of the complaint proceeding is discretionary. Where the complainant and respondent have settled their differences, and there is no valid public purpose to be served independent of the controversy between complainant and respondent, then dismissal is appropriate. Similarly, where the issues at controversy have become moot, where there is no legal prejudice that would result to respondent and where a ruling of the agency is not needed to serve as a guide for the parties or others similarly situated, dismissal is also appropriate. Before granting a motion to dismiss, the Commission obviously must address these threshhold questions.

Here, the parties are clearly disinterested in continuing the complaint case. In fact, VIP now proposes to buy White House as discussed in greater detail below. In the instant circumstances, it would be inequitable to require that White House consume its resources to prosecute VIP. This is not to say that the Commission could not continue a complaint case (as an investigation) absent the complainant; such action would be entirely consistent with Title II, Article XII, Section 13 of the Compact. To do so here, however, would serve little purpose. VIP is apparently disinterested in conducting any (further) operations between points in the Metropolitan District, 3/ and future violations of the Compact, if any, can be the subject of another

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2/ Montgomery Charter Service, Inc. v. WMATC, 302 F.2d 906, 907 (D.C.Cir. 1962), footnote omitted.

3/ White House will survive the purchase as a corporate entity and will not be merged into VIP.

proceeding. Should such a proceeding be necessary, consideration of prior proceedings to which VIP or its principals were privy, and the evidence adduced therein, would be appropriate.

In Case No. AP-84-06, VIP seeks authority to acquire control of White House by purchasing 100 percent of its stock from John Paris. Under the stock-purchase agreement, VIP will pay John Paris $275,000 for the stock subject to certain contingencies including, but not limited to, approval of the transaction by this Commission or a ruling that such approval is not required. 4/ Among other provisions of the agreement, VIP will employ John Paris for one year as vice president and general manager of the business with responsibility for the day-to-day supervision thereof. Kathleen Paris will also be employed for one year, and her duties will include supervision of regulatory compliance. Mr. and Mrs. Paris have been performing these functions for White House in recent years.

Peter Picknelly and Louis Magnano jointly own the stock of VIP and serve as the directors thereof as well as treasurer and president, respectively. VIP holds authority from the Interstate Commerce Commission (MC-169584) to conduct charter and special operations. Mr. Picknelly also exercises control over several other ICC carriers, namely Peter Pan Bus Lines, Inc. (MC-61016), Peter Pan World Travel, Inc. (MC-130223), and Travel Time Bus Lines, Inc. (MC-147777). Mr. Magnano exercises control over Blue Bird Coach Lines, Inc. (MC-108531), and Blue Bird Cab Company, Inc. (MC-117633). Approval of such common control has been granted by the ICC, and ICC approval of the instant transaction has been requested. None of the above-named companies is certificated to conduct operations solely in the Metropolitan District.

On February 9, 1984, VIP, its guarantors and White House filed a joint motion to dismiss Case No. AP-84-06. The motion states that White House will continue its ongoing operations ". . . with simply a change in the stock ownership of that carrier." On February 14, 1984, Airport Limo, Inc., filed a response to this motion and VIP subsequently filed a reply to Airport Limo's response.

Movants rely on the language of Title II, Article XII, Section 12(a)(2) of the Compact which requires Commission approval:

> for any carrier which operates in the Metropolitan District . . . to acquire control, through ownership of its stock or otherwise, of any carrier which operates in such Metropolitan District.

4/ Messrs. Picknelly and Magnano are guarantors of VIP's obligations under the agreement.

According to movants, the phrase "operates in the Metropolitan District" means engaging in transportation of passengers for hire between points solely in the Metropolitan District under WMATC jurisdiction. We concur.

The Commission, in two previous cases, has ruled that common control of one ICC regulated carrier and one WMATC regulated carrier did require Commission approval under Title II, Article XII, Section 12(a)(2) of the Compact. See Order Nos. 1424 and 2156, served May 2, 1975, and October 24, 1980. Those cases are hereby overruled.

As movants point out, there is no principle of statutory construction which would justify two different meanings for the phrase "operates in the Metropolitan District" which appears twice in the text of Section 12(a)(2). Obviously, this Commission would have no jurisdictional basis to approve a stock sale where neither carrier conducted operations subject to WMATC regulation. Hence, we find that the framers of the Compact intended the phrase "operates in the Metropolitan District" to mean operations subject to this Commission's regulation. Such operations, of course would be those performed solely in the Metropolitan District. See D. C. Transit System, Inc. v. WMATC, 420 F.2d 226 (D.C.Cir. 1969) affirming our decision in D. C. Transit System, Inc. v. Public Service Coordinated Transport. 5/ In this context, it is helpful to think of the Metropolitan District

> as a State with the consequence that the Washington Metropolitan Area Transit Commission would have jurisdiction over purely intrametropolitan district transportation and the Interstate Commerce Commission [the Virginia State Corporation Commission or the Maryland Public Service Commission] would have jurisdiction over transportation crossing the metropolitan district boundaries. 6/

Airport Limo contends, inter alia, that VIP's actual operations in the Metropolitan District are clearly shown by the (partial) record in Case No. FC-83-02. Indeed, VIP's operating witness admitted (a) that certain operations were conducted to and from Washington National Airport and Dulles International Airport because they were believed to be exempt, and (b) that certain other operations were conducted within the Metroplitan District under the witness's mistaken belief that VIP had leased operating rights from Beltway.

In this context, we need not and do not decide whether VIP's operations were wilfull or inadvertent. At issue is whether de facto

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5/ See Order Nos. 897 and 925, served December 18, 1968, and February 17, 1969.

6/ H.R.Rep.No. 1621., 86th Cong., 2d Sess 22 (1960); S.Rep.No. 1906, 86th Cong., 2d Sess 25 (1960).

operations conducted for a few months and then discontinued bring VIP within the ambit of Section 12(a)(2).

Here, VIP had ceased local operations and was not operating within the Metropolitan District at the time Case No. AP-84-06 was filed. There is no evidence before us to indicate that this discontinuance is a sham devised to avoid WMATC jurisdiction under Section 12(a)(2). From what appears here, VIP ceased operations because of issues raised in Case Nos. AP-83-48 and FC-83-02. It was only after discontinuance that negotiations leading to Case No. AP-84-06 began. Accordingly, we find that Case No. AP-84-06 should be dismissed.

Finally, we feel that a few words of guidance may be of benefit to those who will commonly control VIP and White House. We require that the books, records and operations of the two carriers be separate. VIP cannot claim to be solely an ICC carrier and conduct local operations under the aegis of the WMATC certificate held by White House. We expect that future WMATC operations will be conducted by White House alone within the terms of its certificate and tariff and in full compliance with the provisions of the Compact and our rules, regulations and orders.

It is clear that the prospective principals of White House are experienced with regulation generally and with the requirements of this Commission. With due diligence from these principals, both White House and VIP should comply fully with those requirements. By way of example, we note that VIP expressed an opinion that it may legally transport passengers between Dulles and National airports, on the one hand, and, on the other, points in the Metropolitan District, pursuant to an exemption in the Interstate Commerce Act. We expect the carriers and their principals to know that the Interstate Commerce Act, to that extent, is suspended, D.C.Code (1981 Ed.) §1-2414, and also to know that WMATC authorization is required for such service. Executive Limousine Service, Inc. v. Goldschmidt, 628 F.2d 115 (D.C.Cir. 1980). Should the principals of VIP and White House fail to exercise due diligence in becoming familiar with, and observing, the requirements of the Commission, we shall not hesitate to take corrective action against both corporate and individual persons.

THEREFORE, IT IS ORDERED that Case Nos. AP-83-48, FC-83-02 and AP-84-06 are hereby dismissed.

BY DIRECTION OF THE COMMISSION, COMMISSIONERS WORTHY, SCHIFTER AND SHANNON:

WILLIAM H. McGILVERY
Executive Director